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# **BARTHOLOMEW COUNTY BOARD OF ZONING APPEALS** (February 27, 2012 Meeting)

### STAFF REPORT

**Docket No. / Project Title:** B/UV-12-01 (Tallman Equipment Company)

Staff: Heather Pope

Applicant: Anthony D. Bozell Trust (DBA Tallman Equipment Company)

**Property Size:** 3.03 Acres

**Current Zoning:** CN (Neighborhood Commercial)

Location: 8491 South State Road 58, in Ohio Township

### **Background Summary:**

The applicant has indicated that the proposed use variance from Zoning Ordinance Section 3.18 is for the purpose of expanding an existing warehousing and electrical equipment rental use in the CN (Neighborhood Commercial) zoning district.

#### **Preliminary Staff Recommendation:**

Denial, Criteria 2, 3, 4 and 5 are not met.

#### **Zoning Ordinance Considerations:**

District Intent: The intent of the CN (Neighborhood Commercial) zoning district is as follows: To provide convenience goods, services, and amenities within close proximity to residential areas. This district is also intended to enable the development of small-scale, mixed-use neighborhood centers. The commercial centers are generally to be located at major intersections, should be pedestrian oriented, and should provide ample buffering from adjacent residential uses. Further, this district should be protected from nonneighborhood serving land uses and businesses.

**Permitted Uses:** The following uses are permitted in the CN (Neighborhood Commercial) zoning district.

- 1. Bed and breakfast facility
- 2. Dwellings, secondary (on upper floors of other use)
- 3. Clinic
- 4. Day-care center (adult or child)
- 5. Police, fire, or rescue station
- 6. Nature preserve / conservation area
- 7. Park / playground
- 8. Office uses (medical office, radio station, vet office with no outdoor kennels, bank, print shop)
- 9. Personal service uses (beauty shop, dry cleaners, photo studio, self-service laundry, tanning salon)
- 10. Recreation uses (small scale billiard room, night club, microbrewery, fitness center)
- 11. Restaurant
- 12. Retail uses (small scale video store, bakery, convenience store without gas station, apparel store)

Permitted Locations: The proposed use is permitted in the following zoning districts:

1. I-1 (Light Industrial)

2. I-2 (General Industrial)

Current Property Information:		
Land Use:	Industrial (warehousing and distribution of electrical equipment)	
Site Features:	Buildings, perimeter fence, drive, parking and loading area, woods	
Flood Hazards:	No flood hazards exist.	
Vehicle Access:	State Road 58 (Arterial)	

Surrounding Zoning and Land Use:			
	Zoning:	Land Use:	
North:	AG (General Rural)	Single Family Residential	
South:	AG (General Rural)	Single Family Residential / Agriculture	
East:	AG (General Rural)	Single Family Residential / Agriculture	
West:	AG (General Rural)	Single Family Residential / Fire Station	

## Comprehensive Plan Consideration(s):

The Future Land Use Map indicates the future use of this property as General Rural.

The following Comprehensive Plan goal(s) and/or policy(ies) apply to this application: .

- 1. **Policy 1-P:** Encourage new or expanded development, both residential and non-residential; to be compact and to be served by public water, sewer and other needed infrastructure and services.
- 2. **Policy 3-HG:** Require appropriate buffer areas between different land uses.
- 3. **Policy 14-E:** Encourage development to take place where existing sewer systems are available.
- 4. **Policy 15-C:** Encourage development to take place where public and semi-public water systems are available.
- 5. **Goal 18:** Promote economic growth in the county by encouraging the location and expansion of businesses and industries that are compatible with their surroundings and provided with adequate services
- 6. Policy 18-B: Encourage industrial and commercial land uses to be consolidated in similar use areas.
- 6. Policy 18-E: Discourage scattered industrial and commercial land use.

### **History of this Location:**

The relevant history of this property includes the following:

- 1. In October 2005 the existing use was approved at this location (B/ZC-05-06). The property was zoned C-4 (Roadside Commercial) at the time and the use was permitted.
- 2. In April 2008 the zoning for the property was changed from C-4 (Roadside Commercial) to CN (Neighborhood Commercial) with the adoption of the new Zoning Ordinance. The C-4 (Roadside Commercial) zoning district does not exist in the new ordinance. The current use is not permitted in the CN (Neighborhood Commercial) zoning district and represents a legally nonconforming use.

- 3. In September 2008 the petitioners received Use Variance approval for expansion of an existing warehousing and electrical equipment rental use in the CN (Neighborhood Commercial) zoning district. The approved expansion was for a 5,415 sq. ft. warehouse (B/UV-08-01 & B/ZC-08-23-Sept). The Board made the following findings to approve the Use Variance requested:
  - 1) **Criteria #1:** Columbus & Bartholomew County Zoning Ordinance, Section 12.3(D)(2)(a), the approval will not be injurious to the public health, safety, morals, and general welfare of the community.

**Finding:** There will be no new employees, noise, or traffic. The proposed building is similar to the existing buildings. This criterion has been met.

2) Criteria #2: Columbus & Bartholomew County Zoning Ordinance, Section 12.3(D)(2)(b), the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

**Finding:** There will be no additional employees, and the proposed building is removed 400 feet from the road. This criterion has been met.

- 3) **Criteria #3:** Columbus & Bartholomew County Zoning Ordinance, Section 12.3(D)(2)(c), the need for the variance arises from some condition peculiar to the property involved. **Finding:** The use on the property is a legally nonconforming use and cannot expand without
  - a variance. This criterion has been met.
- 4) **Criteria #4:** Columbus & Bartholomew County Zoning Ordinance, Section 12.3(D)(2)(d), the strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.

**Finding:** The strict application of the zoning ordinance creates a hardship in continuing the business. This criterion has been met.

5) Criteria #5: Columbus & Bartholomew County Zoning Ordinance, Section 12.3(D)(2)(e), the granting of the variance does not interfere substantially with the Comprehensive Plan.

Finding: Goal 18 and Policies 18-A and 18-B of the comprehensive plan encourages the

**Finding:** Goal 18 and Policies 18-A and 18-B of the comprehensive plan encourages the expansion of industrial uses, and for industrial uses to be consolidated. This criterion has been met.

#### Planning Consideration(s):

The following general site considerations, planning concepts, and other facts should be considered in the review of this application:

- 1. Tallman Equipment Company started operating at this location in October 2005. They warehouse and distribute electrical equipment. Since that time they have received approval from the Bartholomew County Board of Zoning Appeals to build a 5,415 sq. ft. warehouse facility in 2008. The petitioners are now requesting approval to expand again, by adding a 12,000 sq. ft. warehouse facility.
- 2. There are three existing buildings on the property, one is 6,886 sq. ft., one is 4,820 sq. ft. and the other is 5,415 sq. ft. which was built in 2008. There are also parking and loading areas on site. The proposed 12,000 sq. ft. structure, according to the petitioner, is to enclose much of the material that is currently being stored outside. The proposed expansion will necessitate adding two new employees according to the petitioner.
- 3. The current use, when approved in 2005, was permitted in the C-4 Zoning District. However, the zoning changed from C-4 (Roadside Commercial) to CN (Neighborhood Commercial) with the adoption of the current zoning ordinance in April 2008. The current use is not permitted in the CN zoning district and therefore represents a legally nonconforming use.
- 4. This property has a mature wooded fence line on the north, south and east sides which acts as a natural buffer between the industrial use and the single-family residential uses surrounding this property.

- 5. Bartholomew County Highway Engineer, Danny Hollander, has reviewed the proposal and has no issues with the request.
- 6. The Department of Technical Code Enforcement reviewed the proposed application and does not have any issues or concerns with the project at this time.
- 7. The Indiana Department of Transportation (INDOT) has reviewed the drive to the existing business and states that the 'drive is suitable for proposed additional use'.
- 8. If the use variance request is approved, a site plan would need to be reviewed by the Planning Department before a Zoning Compliance Certificate could be issued. At that time all development standards of the CN (Neighborhood Commercial) zoning district will need to be satisfied (ie: landscaping, setback, parking, lighting, etc.).

# **Provisional Findings of Fact / Decision Criteria**

The Board may approve a variance of use from the provisions of the zoning ordinance upon finding that each of the following is true.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

Provisional Findings: Expansion of the existing use should not have a negative impact on the community in any of these areas. Trips to and from the site have the potential to increase as a result of the expansion, but State Road 58 is an arterial, which is designed to handle the traffic. And INDOT has stated the driveway as it exists is suitable for the proposed additional use. Nothing is manufactured on site, and the use does not appear to generate pollutants. The existing commercial septic system was approved in 2005. This criterion has been met.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

*Provisional Findings:* Although the property has a natural wooded buffer between the properties on the north, south and east sides, the expansion of this use could lead to an increase in the number of employees, onsite traffic, and noise, and has the potential to negatively impact the value of surrounding residential properties. *This criterion has not* been met.

3. The need for the variance arises from some condition peculiar to the property involved:

Provisional Findings: The variance is needed because when the County Commissioners adopted the new zoning maps in April of 2008 the zoning changed on this property and the use is no longer permitted. The use variance is needed because the use is not permitted in the CN zoning district, and not from a condition peculiar to the property involved. This criterion <u>has not</u> been met.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:

Provisional Findings: The zoning ordinance supports the gradual reduction of nonconformities, and its strict application would prevent an expansion of the current use because the use is not permitted in the CN zoning district. The owner may continue to operate at this location as legally non-conforming or implement a use that is permitted in the CN zoning district (ie: medical/dental office, self-service laundry, night club/bar, fitness center, etc.) This criterion has not been met.

5. The granting of the variance does not interfere substantially with the Comprehensive Plan:

Provisional Findings: The Comprehensive Plan encourages commercial and industrial development to be consolidated, and designates particular areas as "Development Areas." These are in parts of the county on arterial roads, where public sewer and water are available. The subject property represents

an isolated industrial use in the General Rural area, in which the Plan envisions a mix of agriculture, residential, institutional, and neighborhood business. *This criterion has not* been *met*.

# **Board of Zoning Appeals Options:**

In reviewing a request for a <u>use variance</u> the Board may (1) approve the petition as proposed, (2) approve the petition with conditions, (3) continue the petition to a future meeting of the Board, or (4) deny the petition (with or without prejudice). Failure to achieve a quorum or lack of a positive vote on a motion results in an automatic continuance to the next regularly scheduled meeting.